Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)))	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)))	CC Docket No. 98-147

REPLY COMMENTS OF
ITC^DELTACOM COMMUNICATIONS, INC

ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom ("ITCD"), by its attorneys, hereby submits reply comments in the above-captioned proceeding. ITCD addresses the comments filed in this proceeding by BellSouth Telecommunications, Inc. ("BellSouth") and Comptel.

I. Description of ITC^DeltaCom Communications, Inc.

ITCD provides retail local and long distance services, and its parent, Interstate FiberNet, Inc., ("IFN") is a regional provider of broadband transport services to other communications companies. Neither ITCD nor IFN provides what is commonly called UNE-P, EELs, unbundled local loops, or unbundled local transport to other companies. ITCD is a purchaser of UNE-P, EELs, and other unbundled network elements.

II. Summary

ITCD strongly supports the comments filed by Comptel. ITCD is an active member of Comptel. These Reply Comments are in response comments and recommendations made by BellSouth and the jointly authored UNE FACT Report 2002 from Verizon, SBC, Qwest and BellSouth.

ITCD is in favor of recommendations that allow CLECs to compete, regardless of their approach or business strategy. The only way to open, and keep open, local competition is to maintain and strategically expand the listing of available UNEs. To close the door on UNEs in the infancy of competition will shut out new ideas and new competitors to the marketplace. This closing of future competition is what the ILECs would like to see occur in order to maintain their own monopoly position.

While ITCD strongly supports Comptel's comments, given we are one of the largest CLECs focused in the Southeast and our disagreement with BellSouth on review of their comments, we feel compelled to voice our opinion in this filing.

While ITCD does not use every UNE that is available to us, this should not mean the list of UNEs should be restricted. Each CLEC has a unique origin, business strategy and direction they want to direct their business in providing service to their customers. Some CLECs, like ITCD, grew out of long distance; others cable, wireless, data, and some CLECs grew from no beginnings other than the talent and investments from entrepreneurial leaders.

When looking at the use of UNEs of each of the individual and unique CLECs, the Commission will find that the continuation of UNEs is imperative to maintaining, and more importantly, growing competition. If even one CLEC has relied on the availability of a particular UNE to compete and service its customers, then that UNE is essential and without it that CLEC will be impaired. Furthermore, the Telecom Act which created UNEs as a method of entry does not require that UNEs should be removed once a certain number of carriers were established.

We will focus briefly on the Comptel comments, BellSouth's comments and the UNE Fact Report to bring to the Commission's attention what those filed comments mean to an individual company.

III. The Comments of COMPTEL

As stated earlier ITCD, as member of COMPTEL, participates and is highly supportive of the comments filed by that organization.

There are a couple of points made by COMPTEL that ITCD would like to emphasize in its reply comments.

We agree with COMPTEL on the need to unbundle broadband services. The ILECs will begin to design the local network with more data elements, there-by, excluding increasing larger numbers of their customers from competition by tying the local loop to data products and by the bundling of local and data products together in a manner that excluded a CLEC from utilizing the loop without significant capital deployment. SBC's recent press release on May 28, 2002 of DSL, IP telephony and IP services mixed with central office services is a clear indication that the ILECs are moving toward offering convergent services of voice and data. By combining Centrex and other local services with data, SBC is ensuring these products or the unbundling of these products are not available to the CLEC due to the broadband components of these services.

For example, once the ILECs succeeded in eliminating their xDSL competitors through shoddy provisioning and other misconduct, they exercised their market power immediately by raising rates by $10/month.[1] ITCD experienced this first hand. We had a marketing trial using

[1] See Comptel comment page 33.

xDSL traffic elements from the BellSouth FCC#1 xDSL offering. We had significant issues in ordering, turn-up, and troubleshooting of our trial customers, so much so, that we had to suspend the trial and told our customers to select other carriers. In order to provide our customers with broadband services, we have had to look at either dial-up or provide the customer a dedicated special access connection. ITCD believes there is a future in xDSL services. The Commission should make these services on the local loop available to the CLECs. Today, ITCD is forced to inform BellSouth customers they must give up their xDSL service with BellSouth to become an ITCDeltaCom local customer. We are forced into this position, as BellSouth does not make available the high and low frequencies of the BellSouth loop. Adopting the ruling sought by Comptel will help to ensure that new entrants needing only a portion of the loop to provide customer requested services are entitled to obtain such access, without needing to pay for the entire loop. [2]

We agree with Comptel's position, the need for line sharing is necessary for the promotion and enhancement of local products that would include broadband services. By declaring that the lower frequency portion of a line satisfies the definition of the sub-loop UNE, the Commission would ensure that new entrants continue to have access to these customers.[3] With access to UNE elements necessary for local and xDSL services, ITCD would be in a better position to offer these broadband services to its customers that fall between dial-up and dedicated services. We believe the Commission ordering rules to prohibit or restrict these UNEs will leave this marketplace, comprised mainly of small businesses, with little competition to choose from, forcing customers back to the incumbent ILEC monopoly.

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2 See Comptel comment page 33.

3 See Comptel comment page 44

The other area of emphasis on the Comptel comments is the "co-mingling" of EELs and Special Access. Both the Commission NPRM[4] and Comptel's comments[5] mention of ITCD's Petition Waiver for Supplemental Order Clarification.

Since the filing of the waiver, ITCD has had to build a separate local network to comply with the rules for use of UNE Loops and EELs for purposes of adding new customers. ITCD maintains another network for services not available for UNE that have to be ordered as special or switched access from FCC and state access tariffs. Given the Commission's delay in deciding on our waiver, ITCDeltaCom was left with two choices. One, we could move thousands of local loops from the "co-mingled" network to the dedicated local network; or two, sign a long term special access commitment with BellSouth on the network in place to get a portion of the savings that would come from the conversion of special access to EELs.

ITCD's decision for its existing customer base took the current special access lines that would meet the local test and convert them to BellSouth's MSNS product[6] under a five year commitment. The level of effort to convert and reinstall our local base would have taken well over one year and would have tied up the same valuable resources that ITCD needs to grow revenue customers and add new customers. We were also concerned about the level of expense BellSouth would charge in the repayment of installation costs by disconnecting special access and reconnecting the UNE Loops and EELs. These were capital resources ITCD could spend better elsewhere. These long-term commitments on special access to get the cost reductions that ITCD needed, means this base of special access services will not be available to move to

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4 See paragraph 12 of FCC NPRM CC 01-338

5 See Comptel comment page 97

6 BellSouth FCC#1 Section 7.2.16

alternative service providers and limits ITCD's own options for efficient capital deployment of local infrastructure.

ITCD does support the Comptel position toward "co-mingling".[7] If the Commission were to rule on ITCD's waiver, we would like the Commission to also rule that penalties associated with the move from the BellSouth MSNS product to the co-mingled rule not apply to ITCD, or any other carrier that had to sign term commitments on special access in order to get cost reductions on the UNE loop and EEL equivalents.

IV. ITC^DeltaCom's Reply to BellSouth's Comments

ITCD disagrees with several of BellSouth's statements made in its Introduction and Summary at the beginning of its comments.

BellSouth states "…current market place evidence shows that alternatives are available in specific geographical areas."[8] ITCD is not aware of any wholesale carriers marketing significant loop and local transport UNEs as over 98% of ITCDs local services in BellSouth areas are ordered with UNEs or special access services from *BellSouth*. If there was someone else to buy from at the same or similar rate with the same or similar quality of service, we **likely** would know about it, and we almost certainly would use them. ITCD is not aware of a single company other than BellSouth that will wholesale services of a specific UNE across a ubiquitous area, such as an MTA in BellSouth's territory. Even other large RBOCs, such as Verizon, do not offer wholesale services of specific UNEs in the BellSouth incumbent territory. Each RBOC appears to stay in its own incumbent territory. For example, Verizon does not offer UNE loops, UNE transport or unbundled switching in Miami (BellSouth territory) even though Verizon has a large

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7 See Comptel comment page 96

8 See BellSouth comment page 1

presence in Florida. Additionally, we find BellSouth's statement flawed in light of our analysis of the UNE fact report 2002, we found several misleading statements, as well as, misunderstandings of the CLEC industry, which we plan to expand on later in this reply.

BellSouth states "ILEC revenue growth, <has> suffered unprecedented declines". To ITCD this statement shows the monopolistic attitude of the ILECs. The fact that the ILECs have showed revenue growth declines has nothing whatsoever to do with unbundling or the standards under which it is required. Indeed, the fact that the ILECs continue to largely maintain and some cases grow their existing customer base shows just how large of a market force they exert. Nevertheless, if BellSouth's revenues have declined, it should be read as a small sign that competition is beginning to drive prices downward and that consumers are beginning to see the benefits.

BellSouth also made a statement in their opening comments that "Having moved well beyond the initial phase of local competition implementation in with over half decade experience including inconsistent state determinations with regard to UNE availability….."[9] We would like to remind the Commission that many of the unbundled network elements have not been made available to ITCD until recently, if at all. ITCD's request for waiver mentioned in the NPRM was based upon ITCD co-mingling Local and LD services together. In order to utilize certain unbundled network elements, mainly EEL and loops, of BellSouth, ITCD was required to build a separate, local network and place co-location facilities in BellSouth central offices to connect unbundled network elements with FCC tariff elements. In doing so, this effort delayed our ordering of the DS1 transport (EEL and Loop) to first quarter 2002. Although BellSouth says

[9] See BellSouth comment page 5

there has been six years of competition, in reality, competition can start only after the ILEC has completed its checklist obligations.

We call into question BellSouth's statements and logic that tie the surge in the stock market value of telecom carriers and its fall to the UNE and TELRIC pricing.[10] The fall of the stock market could be debated across many points, but for BellSouth to think that UNE pricing is strongly tied to the economy shows how out of touch they are in understanding competitive markets. The Commission needs to look at the present capital markets and condition of the CLEC industry to see that UNEs are a necessary building block for a CLEC. CLECs, in order to expand profitably, will need to use UNEs, for the foreseeable future.

BellSouth further states and would lead the Commission to believe that CLECs should have used the capital given to them to build out the UNE elements that BellSouth seeks to remove, and that "most CLEC debt was used to finance day-to-day operating expenses and capital costs on items like Operation Systems Support (OSS) that could not be obtained from the ILEC at TELRIC prices".[11]

The truth is most new companies have to use capital to fund operating costs until there is enough revenue to offset expenses and cash flow for growth. The complexity of the telecom industry from the ordering and billing of customers to the maintenance of capital equipment demands sophisticated OSS. There are no "off the shelf" systems available for a CLEC to get into business. There is a real lack of outsourcing companies that provide CLECs with ordering, provisioning and billing of the customer base.

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[10] See BellSouth comment page 14

[11] See BellSouth comment page 14

In ITCD's case, we feel that capital is best spent at the core. By investing capital at our core locations that include our IP, voice and data switches, we use capital dollars and resources to benefit all of our customers. When we build Inter-LATA SONET Rings to connect cities back together to our core locations we are benefiting all ITCD customers, in those markets. In 2000 and 2001, we added an IP network to our core and we offered all our customers the opportunity to purchase dedicated IP services. By developing our backbone network and switching intelligence at the core we have provided and benefited all of our customers with new products and services. The availability of UNE allows more customers to have access to our core network and the products and benefits we bring to the marketplace. ITCD also spent capital on OSS to maintain this core network. ITCD spent capital to implement MetaSolv, an order and inventory system that allows us to more efficiently process customer orders, interface with the various electronic APIs of BellSouth and other ILECs, and an inventory view that allows us to better manage our capital. ITCD has, in addition to MetaSolv, implemented a number of Network Management Systems to manage and control our network elements. For BellSouth to suggest a CLEC can operate without OSS, shows their lack of understanding of the CLECs and the operational complexities with which we operate.

Further, to have used these funds to try to reach our existing customers' locations and remove BellSouth loops would have left us reaching very few customers and not allowing us to build our core networks and products.

BellSouth apparently believes that UNE elements like UNE-P, UNE Loops, and EELs can be found in significant supply. BellSouth concludes that in context of the current economic climate, the next phase of Implementing Rules should promote facility- based competition and encourage investments and innovation.[12] ITCD has found this not to be the case. We have not been approached by any CLEC that is wholesaling its switched network, in a manner that would replace what ITCD gets from BellSouth's UNE-P arrangements. We also queried well-known carriers in our region such as MFS, XO, Time Warner, and ICG, and none of these companies offer a UNE-P equivalent service to BellSouth.

ITCD believes that UNEs are necessary in order to build a sufficient base of customers to make deployment of facility-based strategies economical. ITCD can and should be able to freely choose between the use of UNE and capital deployment based on its own business plan. For the Commission to exclude UNEs at the infancy of local competition will allow the ILEC monopolies to grow without fear of significant new entrants. Restriction of UNEs will mean that ITCD will have to use and be forced into converting UNEs to BellSouth's access tariffs if CLEC wholesale providers are not available.

A CLEC or any telecom company, with limited capital resources, will be deploying those resources in a manner that will benefit the greatest number of customers. To take the limited amount of capital to service a small group of customers is what a monopoly would like to see. The ILECs would like to see a number of facility based providers servicing very small areas. These smaller competitors have fewer resources to compete against the monopoly, keep up with ILEC lobbying efforts and respond to the myriad of FCC and PSC rulings. A strong company that services large areas and has the resources to innovate is a threat to a monopoly. A larger, stronger competitive company has the resources to grow revenue, provide service to larger customers and question monopolistic practices. The ILECs would like the Commission to destroy these larger CLECs through their rulings.

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12 See BellSouth comment page 9

There is considerable risk in the facility build-out to the customer by the CLEC. For a CLEC to invest capital to be facility-based, to the customer premise, it has to be ensured that the customer base is large and stable. Customers, with one or two year agreements, which leave to other competitive providers, strand an investment, which should last 10-20 years. UNEs need to be available as the market matures so these risks of building to the customer premise are minimized.

Yet another reason ITCD invests at the core network versus BellSouth's proposition of taking risks and invest in our own local loop facilities, is the changing strategies of BellSouth and potential Commission rules. The issue of placing local facilities in for long-term growth with changes involving our interconnection agreement and Commission rulings are a risk to our company. It would be very risky and financially difficult for ITCD to invest in local loops that should have a life of 10 to 20 years when the rules seem to change with every state PSC or Commission ruling. We have safer investments within the core network and then building out from the core network. For example, ITCD now is reviewing the placement of our own entrance facilities from our POP to serving wire center and not having to rely on BellSouth's entrance facilities, as well as looking at other CAPS going from our POP to our serving wire center. We believe market share build-up is a long-term process of many CLECs that need to have a sufficient number of access lines in order to grow from the core out versus local loop into the core. We see new investment going from the core out versus the local loop to the core network for new entrants, as there is not enough capital available for a new entrant to build first to the customer, then develop the switching and OSS infrastructure.

ITCD believes that the capital made available in the future to CLECs will limit CLECs to growing out its network based upon strategic business cases (i.e. the capital will have to show a rate of return in order to invest the dollars to grow in a certain area). In order to meet the requirements placed on CLECs in this new economic environment, the CLEC will need to have a sufficient base of services or customers in an area to make the economic use of capital justifiable. Therefore, we envision CLECs spending more money at the core of the network versus at the end loops. ITCD has had experiences with CAPs (Competitive Access Provider) where ITCD has moved into new areas and requested for CAPs interconnect, only to have the CAPS come back and ask for yearly commitments in terms of facility, dollars and terms in order to justify the interconnection between two different local providers.

An important consideration in utilizing CLEC networks for interconnection is the ability to interconnect with each other's networks. This can either be done at the BellSouth central office, at the CLEC central office, or at a neutral location. In many cases, BellSouth has, through interconnection negotiations, restricted and significantly changed the rules of interconnection over time. The agreement that BellSouth has in place with ITCD today states that each interconnection to a CLEC by another CLEC in a central office must be done through a collocation application and any change to facilities has to be done by separate collocation application. What this means is if ITCD wants to interconnect to a CLEC at a particular central office, we must go through the same collocation process as if ITCD was getting more space. We must put in dedicated facilities between two carriers as opposed to using BellSouth for cross connect facilities. This requires a longer time frame for planning as well as a longer time f rame for bringing competition into that particular area (in some cases up to 150 days or more). This ability to interconnect the UNE-Loop to another CLEC transport not only takes time but also significant dollars. ITCD collocated multiplexing equipment to handle EELs in 34 BellSouth central offices. If EELs are no longer required, for ITCD to use CLEC transport in an MTA would require ITCD to collocate with BellSouth in every central office within that MTA, as opposed to one or two.

ITCD disputes BellSouth's assertion that the CLEC industry is mature. BellSouth states "Having moved well beyond the initial phase of local competition implementation, and with over half a decade of experience, including inconsistent state determinations with regard to UNE availability..."[13] ITCD's position is competitive local service does not start until BellSouth completes it's checklist obligations in their 271 approvals, which is still not complete in all states. ITCD just started to order EELs in any measure in March of this year, after meeting all the rules for collocation and having spent six months on collocation projects, ITCD is now able to tie the EELs to the ITCD network for new customers. The comment of over "half a decade" is extremely misleading and is not discounted for the multitude of delay tactics used by the ILECs. The ILECs have had better than a hundred year head start – we are at the very beginning of the next century. MCI started their fight into long-distance competition in 1968, with divestiture in 1984. The industry, nearly 20 years later, is competitive on an inter-city basis, but it took 20 years for the LD market to get to where it is today. The amount of capital required to overbuild the ILECs network compared to long-distance network is unreasonable and impossible in this capital environment. Even the other ILECs, with their vast capital resources, have not attempted to build ubiquitous networks into even the largest MSAs, leaving what is the best potential source of wholesaling, other ILECs, unavailable to CLECs.

ITCD's experience has shown we cannot go to one provider or a set of providers within a MSA that can demonstrate they use a large proportion of their facilities to meet our local access needs. BellSouth made the recommendation that "If, within a MSA, there are demonstrated

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13 See BellSouth comment page 5

pocket markets where some impairment can be shown, but a location specific analysis within a MSA proves administratively burdensome for the Commission to undertake, the Commission should not mandate unbundling within the sub-market…."[14] ITCD believes the opposite is true. There may be small pockets of the MSA, such as downtown business districts and carrier buildings where enough competition may exist for BellSouth not to provide UNEs to a specific set of buildings. But, to take those few buildings and extrapolate that to the entire MSA is absurd. MSAs cover a significant amount of square mileage and numerous smaller concentrations of customers that competition is not available for removal of facilities. Most CLECs and CAPs we work with furnish us with building lists of addresses they have built into for service. These lists vary from just a few buildings in a city to several hundred for the largest carriers in the largest markets. But in no case can a CLEC or CAP claim to offer wholesale services to 100% of the embedded base of a major MTA, over their own self-provisioned facilities. In most cases, if the Commission were to query the CLEC community they would find only a fraction of business/residential markets are covered for self-provisioning and the amount available for wholesale to be lower. With a lack of wholesale UNE providers and the removal of UNE from the ILEC, the Commission will see the duplication of capital by multiple CLECs in the transport between ILEC COs and the CLEC POP, which will do nothing other than make more central office to central office transport available. Real innovation comes from creativity in the marketplace, product development of new and innovative switch technologies, not using capital to go from one central office to another. The removal of UNEs will not foster innovation, but a necessity for the CLEC to scramble to reach the customer with their current set of products. Additional expense and capital will be spent just to reach the customer and not on innovation.

[14] See BellSouth comments page 28

The Commission will see CLECs concentrate market activity away from areas that UNE is restricted. Either of which would be pleasing to the ILEC monopolies, by reducing the number and strength of local competition.

BellSouth's statement that "the expansion of ILEC unbundling obligations from telephone exchange service to advanced telecommunication services is inappropriate and will deter competition in advanced services,"[15] simply reveals that BellSouth will design their local services around data elements so that telephone exchange service from a design view will not exist. BellSouth will deploy technology in the local loop and central office that will be more data centric than voice telephony based. As new technology becomes available, it will not be available as UNEs, if the ILECs get their wish to suspend new UNEs. This migration to data elements that may not be available as UNE will have the effect of those consumers having less choice on service providers than more. It is important that ITCD has access to the advanced data elements at the BellSouth CO so that we can transport those features to our core network. The innovation will come from the intelligence of the switching and data core, not the transport from the customer to the core or CLEC central office.

ITCD would like to comment on BellSouth's signaling networks and call related databases.[16]

BellSouth puts forth the argument that there are enough national providers of SS7 services that BellSouth should not have to make these services available on an unbundled basis. ITCD has also built an SS7 network. What these national carriers and ITCD have in common is in order to use and provide services we have to interconnect with the BellSouth STPs.

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15 See BellSouth comment page 30

16 See BellSouth comments page 102

From ITCDs view, BellSouth needs the ITCD network equally as ITCD needs BellSouth. In fact, ITCD terminates more traffic from BellSouth customers to ITCD customers than vise versa. Today, both parties bill each other the unbundled SS7 elements and rates. If these unbundled rates are removed, we will end up paying for local SS7 transport and messages as part of the intrastate-switched access tariffs that BellSouth provides. ITCD would also like to note BellSouth has not paid for nor properly disputed SS7 services billed by ITCD for 2002 under the interconnection agreement. ITCD believes removal of this UNE will leave ITCD without the ability to seek fair, reciprocal compensation from the equitable use of each other's resources. This leaves the burden of the cost and management of this jointly beneficial resource to fall solely upon the CLEC.

BellSouth mentioned STP transport connectivity but failed to mention access to LIDB, 800, LNP, and other TCAP based databases that ITCD relies on for the transaction of local calls. BellSouth concentrated on the links of SS7 services and not to the underlying services of those links. Removal of these elements means BellSouth will not negotiate this portion of our interconnection agreement leaving ITCD to solely bear the cost of SS7 between both networks and to find other sources for these databases.

BellSouth avoided discussion of the AIN and AIN toolkit that are seen as necessary UNEs for innovation of our customers that utilize BellSouth switching as a step to provide advanced services from our core network. ITCD feels the AIN and AIN Toolkit may need expansion of specific UNEs to make them useful to ITCD.

BellSouth concludes their comments with Section XII titled, "Three Lessons Learned."[17]

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[17] See BellSouth comments page 113

In lesson #1, BellSouth states "...current UNE requirements are not even in the best interest of CLECs..." ITCD believes that the ILECs treat the CLECs as a homogeneous group of companies. While we appreciate BellSouth's concern for our wellbeing and looking out for our best interest, the CLECs can speak for themselves. Both the Reply Comments of ITCD and Comptel should make it very clear to the Commission that UNE elements are still a necessity in the emerging competition of local service. Without UNE availability, ITCD will have to purchase the majority of its services from BellSouth access tariffs.

In lesson #2, BellSouth states, "the key to using UNEs effectively to promote sustainable competition in local exchange markets is to eliminate their availability after the CLECs have had a reasonable opportunity to use them to establish a viable customer base'.[18]While this sounds like a reasonable statement, implementation of this lesson is a different matter. First, it would require the Commission to look at each CLEC on an individual case basis to determine if the CLEC has had reasonable time to move to facility base local loops and EELS. Second, it would cause the Commission to review the capital spending of the CLEC to determine if the CLEC is spending properly toward the goal of being independent from UNEs. Lastly, the Commission will have to determine what measures account for a viable customer base that would enable a CLEC to economically deploy its own capital to replace UNEs.

Lesson #3, BellSouth argues that state regulators are bailing out CLECs with deeper discounted UNEs, which will do more harm than good to new entrants.[19] The truth is some of the state regulators just woke up to the numerous fallacies in BellSouth's cost cases.[20]

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18 See BellSouth page 114

19 See BellSouth page 115

20 *In re: Investigation into pricing of unbundled network elements*, Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP, Issued May 25, 2001,("*Florida UNE Order*"). *In Re: Final Deaveraging of BellSouth Telecommunications, Inc., UNE Rates pursuant to FCC CC 96-45 9th Report and Order on 18th Order on*

. . . . *Continued*

Ironically, BellSouth recently volunteered to lower certain UNE rates in North Carolina[21]; of course, BellSouth's generosity may be linked to its request for 271 approval in that state. In reality, the price of the UNEs is a very important factor in competition, but if the UNE-P carriers or other CLECs do not innovate then, they will be at a competitive disadvantage and will either falter as a company or be consolidated by another CLEC that is more competitive and has shareholders willing to allow capital to be spent on providing customers new and innovated services.

V. Comments of the UNE FACT Report 2002

ITCD has reviewed the UNE FACT Report and finds the data misleading to show competition exists. ITCD believes the ILECs commissioned this report to show there is sufficient competition in the marketplace for the sole purpose of trying to remove UNEs.

Certainly, ITCD did not see the ILECs put forth any data or evidence that there is a sufficient wholesale market available to replace the need for UNEs. Nor did we see in the study the impact to these companies should the UNEs be removed. There is no ruling ITCD is aware of which states other CLECs must make network elements available on a wholesale basis to service an MSA or other areas as defined by the Commission.

Reconsideration released 11/2/99 to be established and submitted for the December Louisiana Public Service Commission Business and Executive Session. August 4, 2000 republished to include: consideration of BellSouth Telecommunications, Inc.'s new cost studies to establish rates for unbundled network elements and network element combinations, including those required by the FCC's Third Report and Order in CC Docket No. 96-98 released November 5, 1999 in the matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, as well as geographically deaveraged rates for certain unbundled network elements and combinations, Recommendation of the Administrative Law Judge, Draft Order Number U-24714 (subdocket a) ("*Louisiana Recommended Order*") at page 39. Both the Florida and Louisiana UNE orders strongly criticized BellSouth for its lack of documentation supporting its proposed non-recurring charges. The Louisiana ALJ and Staff recommendation noted that, in some cases, the non-recurring charges proposed by BellSouth were as much as five or more times higher than the rates of other ILECs.

21 See SGAT price list filed in North Carolina on May 10, 2002 wherein BellSouth voluntarily reduced its nonrecurring rates in North Carolina to the same levels as those adopted recently in Louisiana. BellSouth also voluntarily eliminated the recurring and nonrecurring rates associated with UNE vertical features. For example, the NRC for a 2-wire analog loop is reduced from $57 to $36.

BellSouth is trying to head off the misleading data in this report, by stating in their comments "Requesting carriers can not just claim impairment and deride the data submitted by the ILECs; they must produce substantial and verifiable evidence of real competitive impairment…"[22]. This is a typical monopolistic move to place administrative and cost burdens on the competition. If the FCC were to survey the wholesale capabilities of the facility based carriers, they would find a different story than what the ILECs have attempted to layout.

In our experience of working with CLECs, cable companies, and CAPs on wholesale activities, we have found they focus on higher level capacity to the carrier buildings. Most CAPs furnish ITCD with a build listing showing where they could provide competitive services. We believe that it is not a realistic expectation to compare a building list to an entire MSA. When CAPS are asked whether they can provide a ubiquitous service, within a MTA, the answer is a "qualified" yes. Qualified in the sense that the CAP service itself relies on ILEC UNEs, and qualified from the viewpoint it's a service and not access to the CAP's unbundled elements. ITCD's experience with wireless and cable companies is most do not have the expertise or desire to make their network available to other carriers. Removing UNEs in areas where certain specialty and smaller CLECs can self-provision only hurts the other CLECs that cannot self-provision.

In the UNE FACT report, Appendix B, page B1 shows why the Local Exchange Routing Guide (LERG) should not be used for the purpose of determining company switched assets. In order to establish Interconnection trunking with BellSouth we were required to show CLLI codes within the LATA. In Alabama, we have switch centers in Anniston, Birmingham, and Montgomery, but not in Huntsville or Mobile. Similar cases occur in other states. In Georgia,

[22] See BellSouth comments page 21

for example, Atlanta is our only switching center for voice traffic. In Louisiana, the study shows ITCD has five switches when, in reality, we switch that traffic in Gulfport, MS. The point ITCD would like to make is the LERG data contains information related to POIs (Points of Interconnection) for the exchange of local traffic and this should not be construed as switch assets.

ITCD is not clear on what the RBOCs are showing with Appendix C and D, other than Local Number Portability seems to be working. Just because a number can be ported, should not be stretched to conclude there is sufficient resources to exclude UNEs, or that wholesale services are in significant supply.

Appendix E-2 shows the CLEC packet switches, while this data looks to be accurate for ITCD, the locations of these switches supports our previous comments that ITCD has invested at the core of our network. These switches do not give us the ability to offer broadband services to the local customer at all ILEC central offices. This access can come about by BellSouth unbundling those elements that allow us to transport data to our packet switching centers.

Appendix I shows a listing of CLECs that offer ATM/Frame Relay. Information presented as ITCD's is mis-leading on several fronts. First, ITCD does not offer an ATM product. Second, ITCD does not offer a tariffed local ATM or Frame relay product. The vast majority of the services of our data network are private networks and inter-LATA services. ITCD would be interested in development of data local services if UNE in the Frame Network would be offered to ITCD. What is shown in Appendix I looks closer to the listing of our POP sites.

Appendix J shows the markets in which ITCD has customers, but in those locations ITCD does not, with one exception, own any local loop facilities. Nor do we wholesale local elements of loop and transport. The one exception is Atlanta where we have built into five buildings to service our wholesale customers with our fiber backbone services. We are not clear how the data is important for the exclusion of EELs and Loops as ITCD does not wholesale what it cannot provide.

The Commission is urged to look at the data in the UNE Fact Report and the conclusions made by the RBOCs as suspect. We believe the Commission would be better served with an independent assessment of the wholesale UNE marketplace or by conducting its own survey of all CLECs to assess wholesale services and the extent these services are available.

VI. Conclusion

In BellSouth's conclusion, they recommend the Commission refrain from or limit further the unbundling of existing UNEs. BellSouth also requested the Commission not to unbundled any new investments or advanced services, wireless services, inter-exchange services, exchange access services or information services.[23]

ITCD believes, as previously stated in our reply, we feel the strategy of the ILECs is to move their network to a data centric design and away from their traditional designs. ITCD does not have an issue with the ILECs moving in this direction. ITCD is concerned that the movement of BellSouth's network to advanced services and data, even for the most basic of customers, will exclude the CLEC's access to this customer. This migration will force the CLEC to deploy additional capital, which it does not have, to service those individual customers or lease from an alternative provider, if one actually exists.

If the Commission does as BellSouth asks and excludes new investment from unbundling that will have an effect, over time, to reduce and eliminate the use of UNEs by the CLECs.

[23] See BellSouth comment page 117

BellSouth may introduce new investments just to accelerate the exclusion of UNEs based upon these investments, leaving the CLEC trying to match the spending of the ILEC. With BellSouth spending over five billion dollars per year[24], there is not a single CLEC that can come close to this level of investment.

The Commission should stay the course over the next three years. The CLECs investors rely on stability and, at least in the near-term, this stability is what is needed for investment to continue with the competitive providers. If the Commission goes to a two-year cycle, the CLEC industry will be in the perpetual motion of implementing new rules and preparing to fight for the next set of rules. This is why ITCD has chosen to implement assets at its core to benefit all of its existing customers as opposed to only a few.

By removing certain network elements such as loop and EEL within a MSA, what the commission is stating is that the CLEC has sufficient alternate services for securing those facilities from other carriers. ITCD finds this not to be the case in the major MSAs that BellSouth has argued to remove network elements. ITCD still has the majority of DS1 transport and DS1 loop with BellSouth. ITCD still provisions 98% of all DS1 facilities ordered in MSAs that are BellSouth territory through BellSouth, either as unbundled network elements or as pricing elements within the FCC tariff.

[24] 2001 BellSouth Annual Report

In conclusion, we again state that real competition in the local marketplace only starts when BellSouth successfully completes the Telecom Act checklist obligations. We urge the Commission to recognize that the industry is in the early stage of emerging local competition and to refrain from making any significant changes in the availability of UNE's and to remove the unnecessary restrictions that currently exist.

Respectfully submitted,

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